Previous references.
cls 202-0506 Sls 1-6 B July 06

1908-09

(Courts)

File No. 123-08

Serial Nos. 1-5

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-5

Part B. for febmary '09

SUBJECT.

Rules regarding the custody of moveables attached in execution of decrees of civil courts.

Table of Contents.

1. From the Registrar, chief court, mysore. N° 3809/202 & 18/19-12-08 states that the existing rules above referred to are insufficient and forwards additional rules for Sanction.
2. To the Registrar Chief court, mysore. N°. J 2021 & 16-1-09 Calls for the opinion of the Chief court regarding the rule 8 of the Proposed rules.
3. From the Same. N°. 4325/225 & 21-1-09 - proposes & forwards for approval an alteration in the said rule.

G. R. S. 58

4. To the Same :- N° J. 2317 & 9-2-09 - Approves of the said alteration.
5. To the compiler, Mysore Gazette. N°. J. 2317 & 9-2-09 Notifying the above rules.

G.R.S. 11] 1908-09

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

Cs File No. 223-08

FILE HEADING.

Rules regarding the custody of moveables attached in execution of decrees of Civil Courts.

From

The Registrar of the Chief Court of Mysore

No. 3809/202 Dated 18/19.12.08 Received 21.12.1908.

Diary No. 1585 | Enclos. one Spare Copies | Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that the existing rules on the subject are found to be insufficient and with a view to supply the defect forwards ~~forwards~~ Some additional rules for sanction.

NOTES AND ORDERS.

1. Submitted with a draft order approving of the proposed rules and a draft notification for approval or for other orders.

Hes SW 26/12 [illegible]

2. The existing rules for the custody of moveables attached by Civil Courts in

NOTES—First sheet

GPB—30,000—3-4-07.

G. R. S. 12]
General and Revenue Secretariat.

1

File No. 413 of 1908

Serial No.

Execution of decree having been found by the Chief Court to be insufficient, Supplementary rules have now been forwarded for approval and Sanction by Government.

3. The rules are intended to supply one important defect in Existing procedure. The present practice of allowing movable properties to lie under attachment for an indefinite period is in vogue in all the Civil Courts of the State. The result is that when the property attached is live-stock, ~~or is Subject~~ the Surety in whose charge they are finally left, usually comes forward with an unusually large claim towards "maintenance" charges. Not unfrequently these charges Exceed the value of the Cattle under attachment. No doubt Courts do not finally award such large sums, as the profits derived by the Surety from the use of the cattle are set off against the charges of maintenance. Nevertheless it is better to apply a radical remedy and root out the Evil altogether. The rules

NOTE—Contn. sheet.

GPB—50,000—13-5-08

G. R. S. 12]
General and Revenue Secretariat.

Ch File No. 113 of 1906

Serial No.

under reference are well conceived and may be accepted. Well-designed to meet the Evil. It is necessary to premise here that the delay in bringing the attached properties to sale is due to the inaction of the parties themselves. After attachment the Court, of its own accord, can do nothing in some cases, as when the properties are subject to speedy and natural decay, they can be sold. But this provision does not apply to other movables and even in the case of cattle, it becomes an impossible task for the Court to start proceedings Suo motu in the innumerable cases in which they are attached. The Rules were framed to penalise delay on the part of all the parties concerned viz the attaching Creditor, Surety, Claimant etc. The properties will have to be brought for sale within a fixed time viz Generally two months. Parties can not sleep over, after attachment, as they have been doing now. They will have to speedily apply for sale or else the properties will be released

NOTE—Contn. sheet.

GPB—50,000—13-5-06

G. R. S. 12]
General and Revenue Secretariat.

File No. 1 – of 190 5

Serial No.

The Rules ~~as~~ now proposed contain a distinct clause (8) that any profitable use of the attached cattle by the Sanity disentitled him from claiming any remuneration for keeping and feeding them. I am not sure if the rule is not expressed rather too widely, as, conceivably, a sanity might use the cattle but yet the cost of maintaining them may exceed any profit he might have derived from them. To my thinking it appears to be better to leave the matter to the discretion of the Courts, ~~expanding the rule (as)~~ retaining at the same time the rule that profits earned in the above manner shall be deducted in the remuneration payable to the Custodian of the cattle.

4. If this suggestion is approved, the Chief Court will be addressed on the matter. The other rules may all be accepted. Submit to 1st Comrs.
31st Decr 08.

9287
31-12-08

5. Js. Please draft a Ry re to the Chief Court according to Rules & Submit
Recy = Put up a draft
31/Dec 08

NOTE—Contn. sheet.

GPB—50.000—13-5-08

4/Jan 09.

Serial No.

Submitted with a draft letter to Chief Court for approval.
Hd Asst 9.1.1909 6. To Secretary as directed by the 1st Councillor.
9th Jan. 09.
11.1.09

2 To the Registrar, Chief Court
No 2021 dt 16.1.09.
Calls for the opinion of the Chief regarding the modification of rule 8 of the proposed rules.

3 From the Registrar, Chief Court.
No 4325/225 dt 21.1.1909.
~~Forwards~~ Proposes certain alterations in the said rule and forwards a modified rule.

7. The new rule may perhaps be inscribed. Submit with the draft as ~~drawn~~ put up ~~drafted~~ altered accordingly.
Hd Asst 25.1.09.

8 The amendment suggested has been adopted in substance by the Chief Court. The rules may now be adopted.
9554/26.1.1909
26.1.09.
29.1.09.

9. Draft approved (1st Councillor) 29/1/09

NOTE—Contn. sheet.

GPB—50,000—18-5-08

G. R. S. 12]
General and Revenue Secretariat.

Cb File No. ~~2233~~ 2223 of 190 8-09

Serial No.	
4	To the Registrar, Chief Court. No. J. 2317 & 9.2.09 — Approves the rules —
5	To the Compiler, Mysore Gazette No. J2317 & 9.2.09 — Notifies the above —

NOTE—Contn. sheet.

GPB—50,000—13-5-08

No 3809/202 Enc 1

1585

Gt File No 22308 Encl 1,

Bangalore dated, 18th December 1908.

From,

V.A.Rajaratna Mudaliar Esq.,

Registrar, Chief Court of Mysore.

To,

K.S.Chandrasekhara Aiyar Esq.,

Secretary to Government,

General and Revenue Departments.

Sir,

Adverting to Government Notification No.4671-399 dated 12th October 1899, publishing certain rules framed by the Chief Court for the custody of moveables attached in execution of decrees of Civil Courts, I am directed to state that the above rules are found to be insufficient, inasmuch as there are no rules to prevent attached moveables being left indefinitely either in Court or in the custody of the sureties. With a view to supply this defect, it is proposed to issue the accompanying rules and I am to request that the sanction of Government may be accorded for same under section 269 of the Code of Civil Procedure.

I have the honour to be,

Sir,

Your most obedient servant;

REGISTRAR.

B.V.

2

G.R.S. 26]

Cb File No. 223/08

Serial No. 2

Diary No. of letter replied to 1585

No. J2021

8 16.1.09

General and Revenue Secretariat

(—)

, *the* 190

To

The Registrar of the

Chief Court of

Mysore

Date of issue 16.1.09

Signed by Mr S Ainjamiah Sir

Adverting to your letter J 3809/202 dated the 18th December 1908 forwarding for approval a set of draft rules regarding the custody and sale of movable property attached in execution of decrees of Civil Courts, I am directed to observe that Rule (8) of the said rules, under which any profitable use of the same attached

over.

SUBJECT.

3

Cattle by the Surety disentitles him from claiming any remuneration for keeping and feeding them, as appears to the Judge to be the case, ~~if it appears to the Judge that the Surety has failed to take such reasonable care of the cattle as it is incumbent upon him to take~~ and does not make a reasonable allowance for cases where the cost of maintaining them may exceed the profit that would have been derived by using them. I am ~~of opinion~~ that it would not suffice ~~that the Chief Court may be furnished as to whether it is not desirable~~ to leave the matter to the discretion of the Court, retaining at the same time the rule that profits earned by the above means shall be deducted from the remuneration payable to the Custodian of the Cattle. I have the

List of enclosures

Copied by [illegible] 9.1.09

Examined by [illegible]

GPB—10,000—20-4-08.

No 1862

Chief Court of Mysore.
Bangalore dated 21st January 1909.
Gb file 223-08
Sl no 3.

From.

The Registrar of the
Chief Court of Mysore.
Bangalore.

To. The Secretary to the
Government of Mysore
Genl & Revenue Depts.
Bangalore.

Sir,

With reference to your letter No. G 2021 - Cls 223-08-2 dated 16th instant, suggesting an alteration of Rule 8 of the draft Rules referred to therein, I am directed to state that the rule may be altered

5

altered as follows:-

8. "When cattle or other live stock are in the custody of a surety or of the attaching creditor, the Court may in its discretion, disallow either wholly or in part the remuneration due to him for keeping and feeding them, if he used them in any unprofitable manner."

I have the honor to be,

Sir,

your most obedient servant,

Registrar.

ES

G.R.S. 98]

66 File No. 223-08

Serial No. 4

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

( )

, *the* 190

Date of issue 2/2/09

Signed by Mr Sitharamaiya

READ— Letters No. 4325/225 and 3809/202 dated the 18th December 1908 and 28th January 1909, respectively from the Registrar of the Chief Court of Mysore, stating that the Rules for the custody of moveables, attached in execution of decrees of Civil Courts, published with Govt Notification No 4671-399 dated the 12th October 1899 are found to be insufficient as there are no rules

ORDER THEREON.—No.

Ex. by the Civil Courts

over

SUBJECT

(4)

1585

to prevent attached moveables being left indefinitely either in Court or in the custody of the Sureties and in order to supply the defect forwarding for sanction some additional rules framed by the Chief Court.

Order thereon P: J 2817 / es-228-08-4 dt 9th Feby.

Under Section 269 of the Code of Civil Procedure Govt are pleased to approve of the draft of the rules received with the Registrar's letters read above; ~~which~~ the rules will be published in the Gazette for general information

for Secretary

29 January

one copy 5/2/09

To

The Registrar of the Chief Court of Mysore

in Compiler Mysore Gazette with a Copy of the notification for publication with a Kannada translation in part III of the Gazette.

DLT 2-2-09

KCS 25-1-09

KCS 3-2-09 Confd 5/2

Draft Rules & Notification No:- Ch Sec No 223 of 8 Sch 5

The following rules framed by the Chief Court under para 3 of section 269 of the Code of Civil Procedure and approved by Government are published for general information.

1. When attached moveables are kept in Court for more than six months, they may be sold after notice to the parties and claimants if any, and the proceeds after defraying the expenses of notice and sale shall be deposited in the Treasury and disposed of in the same manner in which the attached property would have been disposed of. The cost of sale will be met in the first instance from the permanent advance with the Nazir and then recouped out of the sale proceeds.

2. In the case of live stock which are attached, they shall be sold on the next day after two months from the date of attachment unless the judgment-debtor applies to the Court for their sale earlier and the proceeds of such sale after defraying the expenses shall be deposited in the Treasury and dealt with as the attached property would have been dealt with.

3. Any property, the value of which is, in the opinion of the Court, less than Rs.10/- may be sold after the time fixed without notice and the sale proceeds after defraying the expenses shall be treated as attached property.

4. If the person whose property is attached, or from whose custody it is taken, gives security to the satisfaction of the Court, the property may be handed over to him. Live stock attached may, on similar terms, be handed over to the attaching creditor, after notice to the owner, if the judgment-debtor or the person from whose custody it was taken does not wish to provide for its maintenance and custody.

5. When attached property is left in the custody of a surety, the surety may apply for its sale or for his being released from his liability. The Court shall thereupon direct notice of such application to issue to the parties at the surety's cost, and if the parties interested do not take steps to get the property

sold

sold or released within the time fixed, it may be sold and the proceeds shall be deposited in Court, after paying the surety the costs properly incurred by him in issuing the notice and in taking care of the property.

Such application shall, in the case of live stock, be made by the surety within sixty days from the date of attachment, and in default he shall not be entitled to the cost of maintenance and custody beyond the said period.

6. In cases in which expense is incurred for the care and custody of attached property, such as live stock, such expenditure will not be allowed for a longer period than two months, provided however that it shall in no case exceed the value of the property. The person in charge may, however, in the case of postponement of sale, apply to the Court at the end of every period of two months for an order for payment of such expenditure. In case in which the postponement of sale is occasioned by the intervention of a claim to attached property, the expenses incurred during the period of postponement shall be borne by the claimant if he fails to establish his claim and by the attaching creditor if such claim is allowed.

7. When the expenditure for the maintenance and custody of attached property is likely to be unreasonably large, the provisions of section 269 of the Code of Civil Procedure for immediate sale should be enforced.

8. When cattle or other live stock ~~is~~ are in the custody of a surety or of the attaching creditor, ~~he shall not be entitled~~ the Court may, in its discretion, disallow wholly or in part, the remuneration ~~to any remuneration~~ for keeping and feeding them, if he uses them in any profitable manner.

These rules shall be read as supplementing those issued with Government Notification No.4671-399 dated the 12th October 1899, as amended by Govt. Notification No. J225-Et. 202-05-6 dated the 25th July 1906.

By order,

B.V. REGISTRAR.

For Secretary to Govt. To the Compiler,

Mysore Gazette for publication with
Kannada translation in part III of the
Mysore Gazette - & for transmission of
300 Spare Copies to this Office

SW
2/2/09

DLC
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25.1.09 -

2 copies.
Copies 3/2/09
EXO 3.2.09

8

No. J 2317 (4)
GS 223-08-5

Government of His Highness the Maharaja of Mysore,
General & Revenue Departments.

Dated Bangalore, 9th February 1909.

H.613
10.2.09
Translated
RL 15.2.09
Secretariat.

Notification.

The following rules framed by the Chief Court under para 3 of section 269 of the Code of Civil Procedure and approved by Government are published for general information.

1. When attached moveables are kept in Court for more than six months, they may be sold after notice to the parties and claimants, if any, and the proceeds after defraying the expenses of notice and sale shall be deposited in the Treasury and disposed of in the same manner in which the attached property would have been disposed of. The cost of sale will be met in the first instance from the permanent advance with the Nazir and then recouped out of the sale proceeds.

2. In the case of live stock which are attached, they shall be sold on the next day after two months from the date of attachment unless the judgment-debtor applies to the Court for their sale earlier and the proceeds of such sale after defraying the expenses shall be deposited in the Treasury and dealt with as the attached property would have been dealt with.

3. Any property, the value of which is, in the opinion of the Court, less than Rs. 10, may be sold after the time fixed without notice and the sale proceeds after defraying the expenses shall be treated as attached property.

4. If the person, whose property is attached, or from whose custody it is taken, gives security to the satisfaction of the Court, the property may be handed over to him. Live stock attached may, on similar terms, be handed over to the attaching creditor, after notice to the owner, if the judgment-debtor or the person from whose custody it was taken does not wish to provide for its maintenance and custody.

5. When attached property is left in the custody of a surety, the surety may apply for its sale or for his being released from his liability. The Court shall thereupon direct notice of such application to issue to the parties at the surety's cost, and if the parties interested do not take steps to get the property sold or released within the time fixed, it may be sold and the proceeds shall be deposited in Cou after paying the surety the costs properly incurred by him in issuing the notice and in taking care of the property.

Such application shall, in the case of live stock made by the surety within sixty days from the date of atte

and in default he shall not be entitled to the cost of maintenance and custody beyond the said period.

6. In cases in which expense is incurred for the care and custody of attached property, such as live stock, such expenditure will not be allowed for a longer period than two months, provided however, that it shall in no case exceed the value of the property. The person in charge may, however, in the case of postponement of sale, apply to the Court at the end of every period of two months for an order for payment of such expenditure. In case in which the postponement of sale is occasioned by the intervention of a claim to attached property, the expenses incurred during the period of postponement shall be borne by the claimant if he fails to establish his claim and by the attaching creditor if such claim is allowed.

7. When the expenditure for the maintenance and custody of attached property is likely to be unreasonably large, the provisions of section 269 of the Code of Civil Procedure for immediate sale should be enforced.

8. When cattle or other live stock are in the custody of a surety or of the attaching creditor, the Court may, in its discretion, disallow either wholly or in part, the remuneration due to him for keeping and feeding them, if he uses them in any

profitable manner.

These rules shall be read as supplementing those issued with Government Notification No. 4671-399 dated the 12th October 1899 as amended by Government Notification No. J 225/Cts 202-05-6 dated the 25th July 1906.

By Order,

C. Balasundaram Aiyer

Offg Secretary to Govt.

To

The Compiler, Mysore Gazette, for publication with Kannada translation in part III of the Mysore Gazette and for transmission of 300 spare copies to this Office.

K.R.

Press Room.